

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO.4:99-CR-57-2H

MARCUS DION MCKOY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

This matter is before the court on the government's motion to dismiss the motion to discontinue sentence filed by the petitioner. Petitioner has not responded to the government's motion to dismiss. Also before the court is a motion to compel discovery filed by petitioner. The government filed a memorandum in opposition to the motion to compel discovery. These matters are ripe for adjudication.

Petitioner was convicted by a jury on March 15, 2000, and sentenced on September 18, 2000, to a term of imprisonment of 174 months. Petitioner's conviction and sentence were affirmed by the Fourth Circuit on October 26, 2001. On September 13,

2002, petitioner filed a motion to vacate pursuant to § 2255, which was dismissed by order filed March 31, 2003.

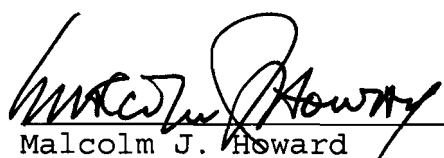
On October 14, 2008, following the filing of a Motion for Reduction of Sentence based on amendments to the Sentencing Guidelines for crack cocaine offenses, this court reduced petitioner's term of imprisonment to 140 months. Petitioner was released from the Bureau of Prisons on August 30, 2010, to begin his term of Supervised Release.

In its unopposed motion to dismiss, the government argues, and this court agrees, that petitioner's motion to discontinue sentence must be considered a successive motion under § 2255. In order to bring a successive § 2255 motion, petitioner must first apply to the United States Court of Appeals for the Fourth Circuit for permission to do so. 28 U.S.C. § 2255(h). Petitioner has not done so, and thus his motion must be dismissed for lack of jurisdiction. See United States v. Winestock, 340 F.3d 200 (4th Cir. 2003).

Therefore, the government's motion to dismiss [DE #162] is GRANTED, and petitioner's motion to discontinue sentence [DE #141] is DISMISSED for lack of jurisdiction. All other pending

motions, including the motion to compel discovery, are deemed moot.

This 4th day of November 2010.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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